

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**DOMCO PRODUCTS TEXAS INC.
AS SUCCESSOR-IN-INTEREST TO
UVALDE ROCK ASPHALT, INC.**

VS.

**THE CONTINENTAL INSURANCE
COMPANY, AS SUCCESSOR-IN-
INTEREST TO HARBOR
INSURANCE COMPANY**

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CIVIL ACTION NO. 4:12-cv-02072

JURY DEMANDED

DOMCO PRODUCTS TEXAS, INC.'S EXPERT DISCLOSURES

To: Defendant, The Continental Insurance Company, as Successor-In-Interest to Harbor Insurance Company, by and through its attorneys of record, Howard Close and Andrew Love, WRIGHT & CLOSE, LLP, One Riverway, Suite 2200, Houston, Texas 77056 and Patrick F. Hofer and Steven W. McNutt of the law firm of Troutman Sanders, LLP, 401 9th Street, N.W., Suite 1000, Washington, D.C. 20004.

Pursuant to Federal Rules of Civil Procedure 26(a)(2), Domco hereby designates the following witnesses who may be used at trial to present evidence under Federal Rules of Evidence 702, 703, or 705:

**I.
RETAINED EXPERT**

1. Donald S. Malecki, CPCU
MALECKI DEIMLING NIELANDER & ASSOCIATES, LLC
520 Watson Rd.
Erlanger, Kentucky 41018

Don Malecki has expert knowledge regarding the insurance and risk management industry and has experience as a broker, consultant, author, archivist-historian, teacher, insurance company underwriter, and insurance company claims consultant.

Domco attaches a written report prepared and signed by Mr. Malecki, attached hereto as “**Exhibit A**,” which contains the following:

- A. A statement of Mr. Malecki’s opinions and the basis and reasons for those opinions;
- B. The facts or data considered by Mr. Malecki in forming those opinions;
- C. The exhibits used to summarize or support Mr. Malecki’s opinions;
- D. Mr. Malecki’s curriculum vitae;
- E. A list of all publications authored by Mr. Malecki in the past 10 years;
- F. A list of all other cases in which Mr. Malecki has testified as an expert at trial or by deposition during the previous four years;
- G. A statement of compensation to be paid for the study and testimony in the case.

II. NONRETAINED EXPERTS

- 2. Representative(s) of the Texas Department of Insurance
333 Guadalupe
P.O. Box 149104
Austin Texas 78714

The Representative(s) from the Texas Department of Insurance is/are expected to present evidence regarding the standard commercial liability forms issued in the state of Texas, including but not limited to, information regarding the standard policy forms and amendatory endorsements for General Liability policies issued in Texas between January 1, 1973 and September 1, 1987.

- 3. Michele Pierro
Insurance Archaeology Group
240 Madison Avenue
New York, NY 10016

To the extent that such testimony would be characterized as expert testimony, Ms. Pierro may present evidence regarding her attempts to locate copies of the Employers Casualty Company policies implicated in this case. In particular, Ms. Pierro may provide testimony

concerning her efforts researching Employers Casualty Company policy forms, records, and employees, contacting insurance brokers, reviewing Texas Department of Insurance records and Texas Property and Casualty Guaranty Association records, contacting the Special Deputy Receiver for Employers Casualty Company in Receivership, and reviewing U.S. Department of Navy records.

III. CROSS DESIGNATIONS

4. Without conceding their expertise or qualifications to testify at this time, Domco reserves the right to elicit, by way of cross-examination, opinion testimony from experts designated and called by Defendant.

5. Without conceding their expertise or qualifications to testify at this time, Domco hereby designates adverse parties, potentially adverse parties, and/or all witnesses associated with adverse parties, all parties to this suit, and all experts designated by any party to this suit, even if the designated party is not a party to this suit at the time of trial. In the event a present or future party designates any expert, and is then dismissed for any reason from the suit or fails to call any designated expert, Domco reserves the right to designate and/or call any such party or experts previously designated by any party.

IV. RESERVATION OF RIGHTS

6. Domco reserves the right to withdraw the designation of any expert, and to aver positively that any such previously designated expert will not be called as witness at trial, and to re-designate the same as a consulting expert, who cannot be called or deposed by opposing counsel.

7. Domco reserves the right to elicit any expert opinion, or lay testimony, at the time of trial, which would be of benefit to the trier of fact to determine the material issues of fact, and which would not violate any existing Court order or the Federal Rules of Civil Procedure.

8. Domco reserves the right to supplement or alter this designation, including seeking to designate additional expert witnesses, within the time limits imposed by the Court, as allowed by subsequent Court order, agreement of the parties, or by the Federal Rules of Civil Procedure.

9. Domco reserves the right to supplement this designation with rebuttal expert witnesses, or rebuttal testimony from currently designated expert witnesses, in response to any experts Plaintiff later designates.

10. Domco reserves whatever additional rights it may have with regard to experts pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and the rulings of this Court.

Respectfully submitted,

By: /s/ Michael Hendryx
Michael Hendryx
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Federal Bar No. 2956
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**ATTORNEYS FOR PLAINTIFF DOMCO
PRODUCTS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served in accordance with the Federal Rules of Civil Procedure on October 25, 2013 to the following parties and/or counsel of record:

Howard Close
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/s/ Michael Hendryx
Michael Hendryx